

U.S. Customs Service

Treasury Decisions

(T.D. 02-61)

RECORDATION OF TRADE NAME: "ORTHOTEC"

ACTION: Notice of application for recordation of trade name.

SUMMARY: Application has been filed pursuant to section 133.12, Customs Regulations (19 CFR 133.12), for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "ORTHOTEC". The trade name is owned by Orthotec, LLC, a Delaware Limited Liability Company organized and created in the State of Delaware, 9595 Wilshire Blvd., Suite 502, Beverly Hills, California 90212.

The application states that the trade name is used on medical devices, more specifically, surgical implants made of stainless steel or titanium for spinal surgery, comprised of hooks, bolts, screws, rods, instruments and containers to hold the goods and instruments.

The merchandise is manufactured in the United States.

Before final action is taken on the application, consideration will be given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation of this trade name. Notice of the action taken on the application for recordation of this trade name will be published in the Federal Register.

This item previously appeared in the Customs Bulletin on October 23, 2002. The time for public comments has since been extended to 60 days from the date of this publication in the Federal Register.

DATE: Comments must be received or on before January 6, 2003.

ADDRESS: Written comments should be addressed to U.S. Customs Service, Attention: Office of Regulations & Rulings, Intellectual Property Rights Branch, 1300 Pennsylvania Avenue, NW. (Mint Annex), Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Gwendolyn Savoy, Intellectual Property Rights Branch, 1300, Pennsylvania Avenue, NW., Washington, D.C. 20229, (202) 572-8710.

Dated: November 4, 2002.

JOANNE ROMAN STUMP,

Chief,

Intellectual Property Rights Branch.

[Published in the Federal Register, November 7, 2002 (67 FR 67894)]

(T.D. 02-63)

FOREIGN CURRENCIES

VARIANCES FROM QUARTERLY RATES FOR OCTOBER 2002

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to 31 U.S.C. 5151, and reflect variances of 5 per centum or more from the quarterly rates published in Treasury Decision 02-60 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates.

Holiday(s): October 14, 2002.

Brazil real:

October 10, 2002	\$0.253485
October 11, 2002 .....	.254453
October 12, 2002 .....	.254453
October 13, 2002 .....	.254453
October 14, 2002 .....	.254453
October 16, 2002 .....	.257732
October 17, 2002 .....	.257732
October 18, 2002 .....	.257732
October 19, 2002 .....	.257732
October 20, 2002 .....	.257732
October 21, 2002 .....	.255558
October 22, 2002 .....	.254388
October 23, 2002 .....	.256345

Venezuela bolivar:

October 17, 2002	\$0.000728
October 21, 2002 .....	.000724
October 28, 2002 .....	.000717
October 29, 2002 .....	.000728

Dated: November 1, 2002.

RICHARD B. LAMAN,
Chief,
Customs Information Exchange.

(T.D. 02-64)

FOREIGN CURRENCIES

DAILY RATES FOR COUNTRIES NOT ON QUARTERLY LIST FOR OCTOBER 2002

The Federal Reserve Bank of New York, pursuant to 31 U.S.C. 5151, has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Holiday(s): October 14, 2002.

Austria schilling:

October 1, 2002	.....	\$0.071648
October 2, 2002	.....	.071525
October 3, 2002	.....	.071735
October 4, 2002	.....	.071372
October 5, 2002	.....	.071372
October 6, 2002	.....	.071372
October 7, 2002	.....	.071336
October 8, 2002	.....	.071190
October 9, 2002	.....	.071714
October 10, 2002	.....	.071663
October 11, 2002	.....	.071612
October 12, 2002	.....	.071612
October 13, 2002	.....	.071612
October 14, 2002	.....	.071612
October 15, 2002	.....	.071292
October 16, 2002	.....	.071394
October 17, 2002	.....	.070623
October 18, 2002	.....	.070551
October 19, 2002	.....	.070551
October 20, 2002	.....	.070551
October 21, 2002	.....	.070725
October 22, 2002	.....	.071089
October 23, 2002	.....	.071016
October 24, 2002	.....	.070798
October 25, 2002	.....	.070980
October 26, 2002	.....	.070980
October 27, 2002	.....	.070980
October 28, 2002	.....	.071532
October 29, 2002	.....	.071590
October 30, 2002	.....	.071474
October 31, 2002	.....	.071808

Belgium franc:

October 1, 2002	.....	\$0.024440
October 2, 2002	.....	.024398
October 3, 2002	.....	.024470
October 4, 2002	.....	.024346
October 5, 2002	.....	.024346
October 6, 2002	.....	.024346
October 7, 2002	.....	.024333
October 8, 2002	.....	.024284
October 9, 2002	.....	.024462

FOREIGN CURRENCIES—Daily rates for countries not on quarterly list for
October 2002 (continued):

Belgium franc (continued):

October 10, 2002	.....	\$0.024445
October 11, 2002	.....	.024427
October 12, 2002	.....	.024427
October 13, 2002	.....	.024427
October 14, 2002	.....	.024427
October 15, 2002	.....	.024318
October 16, 2002	.....	.024353
October 17, 2002	.....	.024090
October 18, 2002	.....	.024066
October 19, 2002	.....	.024066
October 20, 2002	.....	.024066
October 21, 2002	.....	.024125
October 22, 2002	.....	.024249
October 23, 2002	.....	.024224
October 24, 2002	.....	.024150
October 25, 2002	.....	.024212
October 26, 2002	.....	.024212
October 27, 2002	.....	.024212
October 28, 2002	.....	.024400
October 29, 2002	.....	.024420
October 30, 2002	.....	.024380
October 31, 2002	.....	.024494

Finland markka:

October 1, 2002	.....	\$0.165816
October 2, 2002	.....	.165531
October 3, 2002	.....	.166018
October 4, 2002	.....	.165177
October 5, 2002	.....	.165177
October 6, 2002	.....	.165177
October 7, 2002	.....	.165093
October 8, 2002	.....	.164757
October 9, 2002	.....	.165968
October 10, 2002	.....	.165850
October 11, 2002	.....	.165732
October 12, 2002	.....	.165732
October 13, 2002	.....	.165732
October 14, 2002	.....	.165732
October 15, 2002	.....	.164992
October 16, 2002	.....	.165228
October 17, 2002	.....	.163445
October 18, 2002	.....	.163277
October 19, 2002	.....	.163277
October 20, 2002	.....	.163277
October 21, 2002	.....	.163680
October 22, 2002	.....	.164521
October 23, 2002	.....	.164353
October 24, 2002	.....	.163849
October 25, 2002	.....	.164269
October 26, 2002	.....	.164269
October 27, 2002	.....	.164269
October 28, 2002	.....	.165547
October 29, 2002	.....	.165682
October 30, 2002	.....	.165413
October 31, 2002	.....	.166186

FOREIGN CURRENCIES—Daily rates for countries not on quarterly list for
October 2002 (continued):

France franc:

October 1, 2002	.....	\$0.150299
October 2, 2002	.....	.150040
October 3, 2002	.....	.150482
October 4, 2002	.....	.149720
October 5, 2002	.....	.149720
October 6, 2002	.....	.149720
October 7, 2002	.....	.149644
October 8, 2002	.....	.149339
October 9, 2002	.....	.150437
October 10, 2002	.....	.150330
October 11, 2002	.....	.150223
October 12, 2002	.....	.150223
October 13, 2002	.....	.150223
October 14, 2002	.....	.150223
October 15, 2002	.....	.149552
October 16, 2002	.....	.149766
October 17, 2002	.....	.148150
October 18, 2002	.....	.147998
October 19, 2002	.....	.147998
October 20, 2002	.....	.147998
October 21, 2002	.....	.148363
October 22, 2002	.....	.149126
October 23, 2002	.....	.148973
October 24, 2002	.....	.148516
October 25, 2002	.....	.148897
October 26, 2002	.....	.148897
October 27, 2002	.....	.148897
October 28, 2002	.....	.150056
October 29, 2002	.....	.150178
October 30, 2002	.....	.149934
October 31, 2002	.....	.150635

Germany Deutsche mark:

October 1, 2002	.....	\$0.504083
October 2, 2002	.....	.503213
October 3, 2002	.....	.504696
October 4, 2002	.....	.502140
October 5, 2002	.....	.502140
October 6, 2002	.....	.502140
October 7, 2002	.....	.501884
October 8, 2002	.....	.500862
October 9, 2002	.....	.504543
October 10, 2002	.....	.504185
October 11, 2002	.....	.503827
October 12, 2002	.....	.503827
October 13, 2002	.....	.503827
October 14, 2002	.....	.503827
October 15, 2002	.....	.501577
October 16, 2002	.....	.502293
October 17, 2002	.....	.496873
October 18, 2002	.....	.496362
October 19, 2002	.....	.496362
October 20, 2002	.....	.496362
October 21, 2002	.....	.497589
October 22, 2002	.....	.500146
October 23, 2002	.....	.499634

FOREIGN CURRENCIES—Daily rates for countries not on quarterly list for
October 2002 (continued):

Germany Deutsche mark (continued):

October 24, 2002	\$.498101
October 25, 2002	.499379
October 26, 2002	.499379
October 27, 2002	.499379
October 28, 2002	.503265
October 29, 2002	.503674
October 30, 2002	.502856
October 31, 2002	.505208

Greece drachma:

October 1, 2002	\$.002893
October 2, 2002	.002888
October 3, 2002	.002897
October 4, 2002	.002882
October 5, 2002	.002882
October 6, 2002	.002882
October 7, 2002	.002881
October 8, 2002	.002875
October 9, 2002	.002896
October 10, 2002	.002894
October 11, 2002	.002892
October 12, 2002	.002892
October 13, 2002	.002892
October 14, 2002	.002892
October 15, 2002	.002879
October 16, 2002	.002883
October 17, 2002	.002852
October 18, 2002	.002849
October 19, 2002	.002849
October 20, 2002	.002849
October 21, 2002	.002856
October 22, 2002	.002871
October 23, 2002	.002868
October 24, 2002	.002859
October 25, 2002	.002866
October 26, 2002	.002866
October 27, 2002	.002866
October 28, 2002	.002889
October 29, 2002	.002891
October 30, 2002	.002886
October 31, 2002	.002900

Ireland pound:

October 1, 2002	\$1.251835
October 2, 2002	1.249676
October 3, 2002	1.253358
October 4, 2002	1.247010
October 5, 2002	1.247010
October 6, 2002	1.247010
October 7, 2002	1.246375
October 8, 2002	1.243835
October 9, 2002	1.252978
October 10, 2002	1.252089
October 11, 2002	1.251200
October 12, 2002	1.251200
October 13, 2002	1.251200

FOREIGN CURRENCIES—Daily rates for countries not on quarterly list for
October 2002 (continued):

Ireland pound (continued):

October 14, 2002	\$1.251200
October 15, 2002	1.245613
October 16, 2002	1.247391
October 17, 2002	1.233931
October 18, 2002	1.232662
October 19, 2002	1.232662
October 20, 2002	1.232662
October 21, 2002	1.235709
October 22, 2002	1.242058
October 23, 2002	1.240788
October 24, 2002	1.236979
October 25, 2002	1.240153
October 26, 2002	1.240153
October 27, 2002	1.240153
October 28, 2002	1.249803
October 29, 2002	1.250819
October 30, 2002	1.248787
October 31, 2002	1.254628

Italy lira:

October 1, 2002	\$0.000509
October 2, 2002	.000508
October 3, 2002	.000510
October 4, 2002	.000507
October 5, 2002	.000507
October 6, 2002	.000507
October 7, 2002	.000507
October 8, 2002	.000506
October 9, 2002	.000510
October 10, 2002	.000509
October 11, 2002	.000509
October 12, 2002	.000509
October 13, 2002	.000509
October 14, 2002	.000509
October 15, 2002	.000507
October 16, 2002	.000507
October 17, 2002	.000502
October 18, 2002	.000501
October 19, 2002	.000501
October 20, 2002	.000501
October 21, 2002	.000503
October 22, 2002	.000505
October 23, 2002	.000505
October 24, 2002	.000503
October 25, 2002	.000504
October 26, 2002	.000504
October 27, 2002	.000504
October 28, 2002	.000508
October 29, 2002	.000509
October 30, 2002	.000508
October 31, 2002	.000510

Luxembourg franc:

October 1, 2002	\$0.024440
October 2, 2002	.024398
October 3, 2002	.024470

FOREIGN CURRENCIES—Daily rates for countries not on quarterly list for
October 2002 (continued):

Luxembourg franc (continued):

October 4, 2002	\$.024346
October 5, 2002	.024346
October 6, 2002	.024346
October 7, 2002	.024333
October 8, 2002	.024284
October 9, 2002	.024462
October 10, 2002	.024445
October 11, 2002	.024427
October 12, 2002	.024427
October 13, 2002	.024427
October 14, 2002	.024427
October 15, 2002	.024318
October 16, 2002	.024353
October 17, 2002	.024090
October 18, 2002	.024066
October 19, 2002	.024066
October 20, 2002	.024066
October 21, 2002	.024125
October 22, 2002	.024249
October 23, 2002	.024224
October 24, 2002	.024150
October 25, 2002	.024212
October 26, 2002	.024212
October 27, 2002	.024212
October 28, 2002	.024400
October 29, 2002	.024420
October 30, 2002	.024380
October 31, 2002	.024494

Netherlands guilder:

October 1, 2002	\$.447382
October 2, 2002	.446610
October 3, 2002	.447926
October 4, 2002	.445658
October 5, 2002	.445658
October 6, 2002	.445658
October 7, 2002	.445431
October 8, 2002	.444523
October 9, 2002	.447790
October 10, 2002	.447473
October 11, 2002	.447155
October 12, 2002	.447155
October 13, 2002	.447155
October 14, 2002	.447155
October 15, 2002	.445158
October 16, 2002	.445794
October 17, 2002	.440984
October 18, 2002	.440530
October 19, 2002	.440530
October 20, 2002	.440530
October 21, 2002	.441619
October 22, 2002	.443888
October 23, 2002	.443434
October 24, 2002	.442073
October 25, 2002	.443207
October 26, 2002	.443207

FOREIGN CURRENCIES—Daily rates for countries not on quarterly list for
October 2002 (continued):

Netherlands guilder (continued):

October 27, 2002	\$0.443207
October 28, 2002 .....	.446656
October 29, 2002 .....	.447019
October 30, 2002 .....	.446293
October 31, 2002 .....	.448380

Portugal escudo:

October 1, 2002	\$0.004918
October 2, 2002 .....	.004909
October 3, 2002 .....	.004924
October 4, 2002 .....	.004899
October 5, 2002 .....	.004899
October 6, 2002 .....	.004899
October 7, 2002 .....	.004896
October 8, 2002 .....	.004886
October 9, 2002 .....	.004922
October 10, 2002 .....	.004919
October 11, 2002 .....	.004915
October 12, 2002 .....	.004915
October 13, 2002 .....	.004915
October 14, 2002 .....	.004915
October 15, 2002 .....	.004893
October 16, 2002 .....	.004900
October 17, 2002 .....	.004847
October 18, 2002 .....	.004842
October 19, 2002 .....	.004842
October 20, 2002 .....	.004842
October 21, 2002 .....	.004854
October 22, 2002 .....	.004879
October 23, 2002 .....	.004874
October 24, 2002 .....	.004859
October 25, 2002 .....	.004872
October 26, 2002 .....	.004872
October 27, 2002 .....	.004872
October 28, 2002 .....	.004910
October 29, 2002 .....	.004914
October 30, 2002 .....	.004906
October 31, 2002 .....	.004929

South Korea won:

October 1, 2002	\$0.000815
October 2, 2002 .....	.000813
October 3, 2002 .....	.000813
October 4, 2002 .....	.000811
October 5, 2002 .....	.000811
October 6, 2002 .....	.000811
October 7, 2002 .....	.000806
October 8, 2002 .....	.000797
October 9, 2002 .....	.000802
October 10, 2002 .....	.000795
October 11, 2002 .....	.000793
October 12, 2002 .....	.000793
October 13, 2002 .....	.000793
October 14, 2002 .....	.000793
October 15, 2002 .....	.000794
October 16, 2002 .....	.000802

FOREIGN CURRENCIES—Daily rates for countries not on quarterly list for
October 2002 (continued):

South Korea won (continued):

October 17, 2002	.....	\$0.000801
October 18, 2002	.....	.000804
October 19, 2002	.....	.000804
October 20, 2002	.....	.000804
October 21, 2002	.....	.000806
October 22, 2002	.....	.000800
October 23, 2002	.....	.000812
October 24, 2002	.....	.000812
October 25, 2002	.....	.000812
October 26, 2002	.....	.000812
October 27, 2002	.....	.000812
October 28, 2002	.....	.000811
October 29, 2002	.....	.000815
October 30, 2002	.....	.000810
October 31, 2002	.....	.000817

Spain peseta:

October 1, 2002	.....	\$0.005925
October 2, 2002	.....	.005915
October 3, 2002	.....	.005933
October 4, 2002	.....	.005903
October 5, 2002	.....	.005903
October 6, 2002	.....	.005903
October 7, 2002	.....	.005900
October 8, 2002	.....	.005888
October 9, 2002	.....	.005931
October 10, 2002	.....	.005927
October 11, 2002	.....	.005922
October 12, 2002	.....	.005922
October 13, 2002	.....	.005922
October 14, 2002	.....	.005922
October 15, 2002	.....	.005896
October 16, 2002	.....	.005904
October 17, 2002	.....	.005841
October 18, 2002	.....	.005835
October 19, 2002	.....	.005835
October 20, 2002	.....	.005835
October 21, 2002	.....	.005849
October 22, 2002	.....	.005879
October 23, 2002	.....	.005873
October 24, 2002	.....	.005855
October 25, 2002	.....	.005870
October 26, 2002	.....	.005870
October 27, 2002	.....	.005870
October 28, 2002	.....	.005916
October 29, 2002	.....	.005921
October 30, 2002	.....	.005911
October 31, 2002	.....	.005939

Taiwan N.T. dollar:

October 1, 2002	.....	\$0.028645
October 2, 2002	.....	.028596
October 3, 2002	.....	.028580
October 4, 2002	.....	.028580
October 5, 2002	.....	.028580
October 6, 2002	.....	.028580

FOREIGN CURRENCIES—Daily rates for countries not on quarterly list for
October 2002 (continued):

Taiwan N.T. dollar (continued):

October 7, 2002	\$0.028523
October 8, 2002 .....	.028474
October 9, 2002 .....	.028482
October 10, 2002 .....	.028482
October 11, 2002 .....	.028441
October 12, 2002 .....	.028441
October 13, 2002 .....	.028441
October 14, 2002 .....	.028441
October 15, 2002 .....	.028450
October 16, 2002 .....	.028604
October 17, 2002 .....	.028694
October 18, 2002 .....	.028645
October 19, 2002 .....	.028645
October 20, 2002 .....	.028645
October 21, 2002 .....	.028653
October 22, 2002 .....	.028637
October 23, 2002 .....	.028686
October 24, 2002 .....	.028736
October 25, 2002 .....	.028736
October 26, 2002 .....	.028736
October 27, 2002 .....	.028736
October 28, 2002 .....	.028662
October 29, 2002 .....	.028719
October 30, 2002 .....	.028736
October 31, 2002 .....	.028777

Dated: November 1, 2002.

RICHARD B. LAMAN,
Chief,
Customs Information Exchange.

19 CFR Parts 4, 19, 122, 123, 127, 141, 142 and 178

(T.D. 02-65)

RIN 1515-AC57

GENERAL ORDER WAREHOUSES

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations principally to create a new class of bonded warehouse exclusively for the receipt of general order merchandise, and to include procedures for authorizing and operating general order warehouses. This amendment of the Customs Regulations is in response to a recent increase in the amount of unentered merchandise being moved into general order facilities. This increase has resulted from changes in the law, and it has prompted the importing community to request that Customs put in place uniform, national procedures for approving and operating warehouses receiving general order merchandise.

In addition, changes are made to the Customs Regulations to implement certain amendments to the law made by the Customs modernization portion of the North American Free Trade Agreement Implementation Act. The amendments concern the circumstances where the title to unclaimed and abandoned merchandise vests in the Government, in lieu of sale of the merchandise at public auction.

EFFECTIVE DATE: December 9, 2002.

FOR FURTHER INFORMATION CONTACT: Tim Sushil, Office of Field Operations, 202-927-0564.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Title VI of the North American Free Trade Agreement Implementation Act, 107 Stat. 2057 (Pub. L. 103-182; December 8, 1993), popularly known as the Customs Modernization Act (Mod Act), amended a number of Customs and navigation laws.

Some of these amendments affected the treatment of general order merchandise. General order merchandise is merchandise that is required to be deposited in a bonded warehouse at the risk and expense of the consignee because it is not timely entered as provided by law or regulation, entry for it is incomplete because estimated duties, fees or interest has not been paid, entry cannot be made for it due to lack of proper documentation or other cause, or because it is not correctly or legally invoiced. See 19 U.S.C. 1490(a). Customs has denominated the type of bonded warehouse in which this type of merchandise must be deposited as a general order warehouse. See 19 CFR 127.1.

In particular, section 656 of the Mod Act amended 19 U.S.C. 1448(a) to provide, among other things, that the owner or master of any vessel or vehicle, or agent thereof, would be required to notify Customs of any merchandise or baggage unladen from the vessel or vehicle, for which entry was not made within the time prescribed by law or regulation; and if entry were not made within the prescribed time, the master or person in charge of the importing vessel or vehicle, or agent thereof, would be responsible for such unentered merchandise until it was removed from the carrier's control and placed in general order status in accordance with 19 U.S.C. 1490.

In concert with this, section 658 of the Mod Act amended 19 U.S.C. 1490 by deleting the requirement that a Customs officer take unentered merchandise into Customs custody and send it to a bonded warehouse. Instead, carriers are now required to notify both Customs and a bonded warehouse of the unentered merchandise, and the bonded warehouse is then responsible for arranging for the transportation and storage of the merchandise at the risk and expense of the consignee.

These, and related, statutory amendments were implemented by a final rule document amending the Customs Regulations, that was published in the Federal Register (63 FR 51283) on September 25, 1998, as T.D. 98-74.

Based on the statutory amendments, and the Customs Regulations implementing them, imported merchandise could not remain at the wharf, pier or other place of unloading more than 15 calendar days after its landing; or, if transferred from the arriving carrier to any party under a Customs-authorized permit to transfer or in-bond entry, the merchandise could not remain in the custody of that party more than 15 calendar days after its receipt under a Customs-authorized permit to transfer or more than 15 calendar days after its arrival at the port of destination, as provided in §§ 4.37, 122.50, 123.10, Customs Regulations (19 CFR 4.37, 122.50, 123.10). There is no provision in these regulations for any extension of this 15-day period.

Customs and the trade have consequently seen an increase in the amount of unentered merchandise moving into general order facilities, including merchandise, such as hazardous materials, requiring specialized storage facilities. Due to this increase in merchandise moving into temporary storage in general order status, the trade community has sought the establishment of national, uniform criteria for the approval and operation of general order warehouses.

Accordingly, by a document published in the Federal Register (65 FR 42893) on July 12, 2000, Customs proposed that a new class of bonded warehouse, a Class 11 warehouse, be established exclusively to handle the receipt of general order merchandise as described in § 127.1, Customs Regulations (19 CFR 127.1).

It was further proposed that a Class 3, 4, or 5 bonded warehouse, as described in § 19.1(a)(3), (4), or (5), Customs Regulations (19 CFR 19.1(a)(3), (4), or (5)), could likewise be used for the deposit of general

order merchandise, but only if there were no Class 11 warehouse otherwise available to receive the merchandise, and provided the Class 3, 4, or 5 warehouse had also been certified by the port director as meeting the criteria for a Class 11 warehouse, following an application under § 19.2, Customs Regulations (19 CFR 19.2).

To this end, § 19.1 was proposed to be amended to include provisions for general order warehouses. Matters relating to inventory control and minimum space requirements for general order warehouses were also addressed in the proposed rule, in §§ 19.2 and 19.12, respectively.

Additionally, an amendment to § 19.2(f) was proposed to allow the port director to require a business entity seeking approval to establish a Customs bonded warehouse to submit fingerprints, as part of the application process, for all its employees, as opposed to only those of all officers and managing officials of the business entity, as is currently the case; this proposed change would pertain to an application by a business entity to establish any Customs bonded warehouse, including a general order warehouse.

Furthermore, the proposed rule put forth amendments to §§ 4.37, 19.9, 122.50 and 123.10, Customs Regulations (19 CFR 4.37, 19.9, 122.50 and 123.10), that would make it the responsibility of the warehouse proprietor to prepare a Customs Form (CF) 6043 (Delivery Ticket), or other similar Customs document as designated by the port director or an electronic equivalent as authorized by Customs, that covered the proprietor's receipt of the merchandise and its transport to the warehouse from the custody of the carrier (or from any other party to whom custody of the merchandise had been transferred by a Customs-authorized permit to transfer or in-bond entry). This was intended to recognize and specifically implement the existing requirement described above that the warehouse proprietor be responsible for the transportation and storage in general order status of unentered merchandise following due notification by the arriving carrier or other bonded carrier of the presence of such merchandise.

Moreover, §§ 4.37, 122.50 and 123.10 were to be amended to provide that if a carrier or other party to whom the original carrier had properly transferred unclaimed and abandoned goods refused to relinquish custody over the goods to a general order warehouse proprietor, the carrier or other party would be liable for liquidated damages under the international carrier or custodial bond, as applicable; and §§ 4.37, 122.50 and 123.10 were to be further amended to provide that in cases where the warehouse proprietor was unable to accept goods into general order because the goods were required to be exported or destroyed, or for other good cause, the carrier or other party to whom the original carrier had properly transferred the goods would be responsible under bond for exporting or destroying the goods, as necessary. It was further proposed that § 127.13, Customs Regulations (19 CFR 127.13), be changed consistent with §§ 4.37, 122.50 and 123.10.

Also, the proposed rule would revise § 127.14 to require that the warehouse proprietor assume the responsibility and expense for the destruction of general order merchandise, in the event that such destruction were found to be warranted under the circumstances (*i.e.*, where the port director concludes that the merchandise has no commercial value or cannot be disposed of at public auction (unsalable)); however, before destroying the merchandise, the warehouse proprietor would first have to make a reasonable effort to identify and inform the importer (owner) or consignee of the merchandise regarding its intended destruction.

MOD ACT CHANGES; TITLE TO UNCLAIMED MERCHANDISE VESTING IN GOVERNMENT

In addition, under the proposed rule, § 127.14(a) would be revised and a new subpart E would be added to part 127 essentially to conform with and implement a number of amendments made by section 659 of the Mod Act to 19 U.S.C. 1491 concerning the provision that under certain conditions title to unclaimed and abandoned merchandise could vest in the United States, as an alternative to the Government having to sell such merchandise at public auction.

TIME LIMIT WITHIN WHICH TO MAKE ENTRY; CONFORMING CHANGES

Finally, in conformance with the changes already made under T.D. 98-74 to §§ 4.37, 122.50, and 123.10, as discussed above, the proposed rule would similarly revise §§ 141.5 and 142.2, Customs Regulations (19 CFR 141.5, 142.2), to require that the entry of merchandise be made within 15 calendar days (as opposed to 5 working days) after landing from a vessel, aircraft or vehicle, or after arrival at the port of destination in the case of merchandise transported in bond.

DISCUSSION OF COMMENTS

Six commenters responded to the notice of proposed rulemaking. A description of the issues raised by these commenters, and Customs response to each issue, is set forth below.

It is initially noted, however, that one commenter made certain suggestions during the proposed rulemaking comment period that were outside the scope of the notice, in particular: in connection with the unentered merchandise described in sections 4.37(b), 122.50(b) and 123.10(b), to require that a carrier notify a general order warehouse of the presence of such unentered merchandise within the 15-day period, as opposed to the 20-day period, described in those sections; and to add a requirement in part 127 that carriers provide all information to the warehouse that they have on the consignee of unclaimed merchandise in order to facilitate the preparation of notices of sale for the merchandise. Such recommendations which, while related, fell outside the scope of the original notice of proposed rulemaking, are not addressed in this document. If found warranted, they would need to be the subject of another rulemaking document.

GENERAL ORDER WAREHOUSES; PART 19

Comment:

One commenter objected to the provision in proposed § 19.1(c) requiring that an available Class 11 (General Order) warehouse be used to handle general order merchandise, in preference to another available general order (G.O.) warehouse of Class 3, 4, or 5. The commenter asserted that a mandatory requirement to this effect would be unfair, would competitively disadvantage G.O. warehouses of Class 3, 4 or 5, and would eliminate choice for the importing public in this area.

Customs Response:

Customs agrees. Section 19.1(c) is revised to eliminate any requirement to use a Class 11 warehouse over an existing Class 3, 4 or 5 warehouse that has been approved to handle general order merchandise. Carriers and the importing community should, and will, continue to have a choice as to the particular G.O. warehouse to which their shipments may be sent.

Comment:

One commenter suggested that Class 11 G.O. warehouses be allowed to rent or lease additional space for the storage of G.O. merchandise.

Customs Response:

Section 19.1(c) already provides for this. Any warehouse eligible to receive general order merchandise (a Class 3, 4, 5, or 11 warehouse) may rent or lease suitable premises for the storage of such merchandise, if there is no space at the warehouse otherwise available.

Comment:

Several commenters requested that Customs elaborate on the provision in proposed § 19.2(d) regarding minimum space requirements and other criteria for becoming a G.O. facility. In particular, one commenter asked that Customs impose regulatory limits on the number of G.O. warehouses that could operate in a port and, furthermore, that Customs specify in its regulations those parties that could not qualify to operate a G.O. warehouse.

Customs Response:

Customs does not believe that further elaboration upon these matters in the regulations is warranted. Both the number of facilities and the space required for G.O. merchandise will vary from port to port; therefore no one standard can or should be applied.

Comment:

One commenter objected to proposed § 19.2(f) which provided that the port director “may” require a business entity seeking to establish a Customs bonded warehouse to submit fingerprints from all its employees, as part of the application process, instead of limiting the submission of fingerprints to those of all officers and managing officials of

the business entity, as is currently the case. On the other hand, several commenters wanted the word “may” in proposed §19.2(f) replaced with “should”.

Customs Response:

Customs disagrees with both views. The port director should have the discretion to determine the extent of scrutiny that is called for in given circumstances with respect to a business entity that is applying for approval to establish a Customs bonded warehouse, including the ability to require fingerprints from all employees of the business entity.

Comment:

In proposed § 19.12(a), one commenter was concerned about the expense of an automated inventory system that would be a requirement for a general order warehouse. The commenter requested that small warehouses be allowed to continue with a manual system. In the alternative, it was suggested that Customs should bear some of the costs associated with an automated inventory system.

Customs Response:

Customs has concluded that the requirement for an automated inventory system should apply to all general order warehouses. Most warehouses already have an automated system that could likewise be extended to include G.O. merchandise; against this backdrop, automation should not impose an unreasonable cost. In addition, it is noted that in § 19.12(a) existing G.O. warehouses will be given a phase-in period of 2 years within which to automate their recordkeeping. This time frame should be adequate and provide ample time especially for smaller operators to defray some of the costs that they incur with automation. In this regard, Customs will not be involved in the cost, support, or maintenance of an automated inventory system. It is properly the responsibility of the warehouse proprietor to choose an automated system that best suits the particular needs of the warehouse and that fulfills Customs regulatory requirements.

Comment:

In proposed § 19.12(a), several commenters thought that the “phase-in” period for automation was overly long.

Customs Response:

Customs finds that this two-year phase-in allowance is reasonable and prudent. As already observed, it will afford some of the smaller G.O. warehouses needed time to acquire and install an automated record system and to defray their cost in so doing.

TRANSFERRING UNENTERED MERCHANDISE TO A G.O. WAREHOUSE;
SECTIONS 4.37, 122.50 AND 123.10

Comment:

One commenter asked that an explicit statement be included in §§ 4.37(b), 122.50(b) and 123.10(b) limiting to 15 calendar days the peri-

od during which unentered merchandise may remain in the custody of the arriving carrier or other bonded carrier to whom such merchandise was properly transferred.

Customs Response:

Customs believes that this 15 calendar-day limitation is already clearly set forth in the cited regulatory provisions and that no change is needed.

Comment:

Two commenters objected to the provision in proposed §§ 4.37(c), 19.9(a), 122.50(c) and 123.10(c) making it the responsibility of the G.O. warehouse proprietor to prepare the transfer documentation (CF 6043 or other approved form or an electronic equivalent) to cover the proprietor's receipt of unentered merchandise and its transport to the G.O. warehouse from the custody of the arriving carrier (or other bonded carrier).

Customs Response:

Customs agrees. The preparation of the transfer documentation (CF 6043 or other approved form or electronic equivalent) should remain with the bonded carrier (or other party to which the bonded carrier has properly transferred the merchandise). Customs acknowledges that this is the existing procedure in most ports. As a practical matter, the G.O. warehouse proprietor does not have sufficient information as to the identity and quantity of the unentered cargo to expeditiously and knowledgeably prepare such transfer documentation prior to acceptance of the goods. Thus, shifting the responsibility for preparation of the delivery ticket from the arriving carrier (or other bonded carrier) to the warehouse proprietor would unnecessarily delay the transfer of unentered merchandise to general order. Sections 4.37(c), 19.9(a), 122.50(c) and 123.10(c) are changed accordingly.

Comment:

Two commenters suggested that the phrase "Customs-approved bonded warehouse" appearing in proposed §§ 4.37(d), 122.50(d), and 123.10(d) should be replaced by "Customs-approved bonded General Order warehouse".

Customs Response:

Customs agrees. Sections 4.37(d), 122.50(d), and 123.10(d) are changed accordingly.

Comment:

One commenter requested clarification as to the difference between the liquidated damages provision in proposed § 4.37(d) and the penalties authorized under § 4.37(a). This commenter also requested that the phrase "carrier or other party may be liable for * * *" in proposed § 4.37(d) be changed to "the carrier shall, as determined by the port director, be liable for * * *".

Customs Response:

The penalty contained in § 4.37(a) (also see §§ 122.50(a) and 123.10(a)) may be assessed against the master or owner of an arriving vessel, or the agent of the master or owner, for failing to timely notify Customs of the presence of unclaimed merchandise that has been unladen from the vessel. The penalty is up to \$1,000 per bill of lading; however, if the value of the unclaimed merchandise on the bill is less than \$1,000, the penalty will simply be equal to the value of such merchandise.

Liquidated damages in § 4.37(d) (also see §§ 122.50(d) and 123.10(d)) may be assessed against an arriving carrier or other party to whom the arriving carrier has properly transferred the unentered, unreleased merchandise if the carrier or other party fails to timely relinquish custody over the merchandise to a warehouse authorized to receive it. To this end, § 4.37(d) is changed to make clear that liquidated damages would only apply if the carrier fails to “timely” relinquish custody over the subject merchandise. Sections 122.50(d) and 123.10(d) are likewise changed. However, Customs finds that the change suggested by the commenter is not needed. If applicable, liquidated damages would be assessed under the international carrier bond of the arriving carrier or the custodial bond of the other party, as appropriate.

Comment:

With respect to proposed §§ 4.37(e), 122.50(e) and 123.10(e), several commenters wanted to give G.O. warehouse proprietors the right to refuse any shipments that they did not want to accept. One commenter wanted a right to return merchandise to the carrier, and asked that a provision be added to the regulations that the carrier must accept the return of such merchandise, if the merchandise was sent to the warehouse improperly because it was hazardous material or was otherwise required to be exported or destroyed.

Customs Response:

A bonded warehouse proprietor may not lawfully decline to accept general order merchandise that the warehouse is eligible to receive and is capable of storing. The underlying general order statute (19 U.S.C. 1490(a)) does not envision an unfettered right on the part of the warehouse proprietor to refuse general order goods. However, as already stated in §§ 4.37(e), 122.50(e) and 123.10(e), if the port director finds that the warehouse proprietor cannot accept goods because they are required by law to be exported or destroyed, or for other good cause, such goods will remain in the custody of the arriving carrier or other bonded carrier for purposes of export or destruction. It is incumbent upon the warehouse proprietor to take reasonable steps to inquire about and ascertain the nature and condition of the goods before accepting them. Once goods are accepted into the custody of the warehouse proprietor, the appropriate disposition of the goods would at that point accordingly become the responsibility of the proprietor.

TITLE TO UNCLAIMED MERCHANDISE VESTING IN GOVERNMENT; PART 127
Comment:

Several commenters objected to the provisions in proposed subpart E of part 127 regarding unclaimed merchandise the title to which vests in the U.S. Government. In particular, they wanted to be compensated by the Government for their storage and transportation charges on cargo to which the Government decides to take title and retain for its own use. These commenters contended that not being reimbursed for any expenses they incurred for the six-month G.O. period would impose a great financial burden upon them.

Customs Response:

Customs believes that the commenters' concerns are unfounded. It is true that under the conditions specified in 19 U.S.C. 1491(b), the title to unclaimed merchandise may vest in the U.S. Government free and clear of any liens or encumbrances. Yet, while the Government may retain title to unclaimed merchandise free and clear of any liens or encumbrances, all transfer and storage charges or expenses accruing on the merchandise are, nevertheless, required to be paid by the Federal, State or local government agency that receives the merchandise, pursuant to 19 U.S.C. 1491(c). Such transfer and storage charges would include those accruing with respect to the merchandise while subject to general order. Section 127.42(b) is revised to make this clear.

ADOPTION OF PROPOSAL

In view of the foregoing, and following careful consideration of the comments received and further review of the matter, Customs has concluded that the proposed amendments with the modifications discussed above and the additional changes discussed below should be adopted as a final rule.

ADDITIONAL CHANGES

Section 19.1(b) is amended to provide that a class 11 (general order) warehouse may be designated as a constructive manipulation (class 8) warehouse when the exigencies of the service so require.

Also, § 127.21 is changed to grant port directors the authority to defer sales of unclaimed and abandoned (general order) merchandise. Currently, § 127.21 requires that unclaimed and abandoned merchandise be sold at the first regular sale held after the merchandise becomes subject to sale, unless a deferment on selling it is authorized by the Commissioner of Customs. Customs has decided that this deferral authority be at the port level.

Furthermore, § 127.28(a) is changed so as to more clearly emphasize the necessity that drugs, seeds, plants, nursery stock and other articles, when so required, must be inspected by a representative of the Department of Agriculture to determine whether the articles comply with the law and regulations administered by that Department, especially given that, where found to be in noncompliance, such articles would need to be immediately destroyed.

Finally, Customs has decided that § 127.41(a) should be revised to state that the port director may provide for the vesting of title to unclaimed and abandoned merchandise in the United States, with the concurrence of the Assistant Commissioner, Office of Field Operations, rather than with the concurrence of the Commissioner of Customs, as initially proposed.

REGULATORY FLEXIBILITY ACT AND EXECUTIVE ORDER 12866

The amendments primarily dealing with general order warehouses are intended to expedite the handling and disposition of general order merchandise, and to further facilitate consistent and uniform treatment in the administration of general order warehouses. Also, the amendments dealing with the Mod Act are intended to conform with, implement and enforce the provisions of the statutory law and ensure the protection of the revenue. As such, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that these amendments will not have a significant economic impact on a substantial number of small entities. Accordingly, the amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604. Nor do they meet the criteria for a significant regulatory action as specified in E.O. 12866.

PAPERWORK REDUCTION ACT

The collections of information in this final rule document had in part already been reviewed by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) and assigned OMB Control Numbers 1515-0121 (Information to be supplied by owner or lessee in support of application to establish a bonded warehouse facility); and 1515-0220 (Notification regarding imported merchandise or baggage for which entry has not been made). This document restates these collections of information without material change.

The remaining collection of information in this final rule document was submitted for review and has been approved by the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1515-0224. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

This latter collection of information is contained in §§ 4.37(c), 19.9(a), 122.50(c), and 123.10(c). This information is necessary to: expedite the handling and disposition of general order merchandise; ensure that merchandise and baggage imported into the United States has been properly accounted for in accordance with the requirements of the statutory law; and facilitate consistent and uniform treatment in the administration of general order warehouses. The likely respondents and/or recordkeepers are business organizations, including importers

and carriers. The estimated average annual burden associated with this information collection is 33 hours per respondent or recordkeeper.

Comments on the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, D.C. 20503. A copy should also be sent to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW, 3rd Floor, Washington, D.C. 20229.

Part 178, Customs Regulations (19 CFR part 178), containing the list of approved information collections, is appropriately revised to reflect this additional information collection.

LIST OF SUBJECTS

19 CFR Part 4

Cargo vessels, Common carriers, Customs duties and inspection, Entry, Exports, Imports, Maritime carriers, Passenger vessels, Reporting and recordkeeping requirements, Shipping, Vessels.

19 CFR Part 19

Bonds, Customs duties and inspection, Freight, Imports, Licensing, Reporting and recordkeeping requirements, Warehouses.

19 CFR Part 122

Air carriers, Aircraft, Airports, Air transportation, Baggage, Bonds, Customs duties and inspection, Foreign commerce and trade statistics, Freight, Imports, Reporting and recordkeeping requirements.

19 CFR Part 123

Aircraft, Canada, Customs duties and inspection, Imports, International boundaries, International traffic, Mexico, Motor carriers, Railroads, Reporting and recordkeeping requirements, Trade agreements, Vehicles, Vessels.

19 CFR Part 127

Customs duties and inspection, Exports, Freight, Reporting and recordkeeping requirements.

19 CFR Part 141

Customs duties and inspection, Entry of merchandise, Release of merchandise, Reporting and recordkeeping requirements.

19 CFR Part 142

Administrative practice and procedure, Common carriers (Carrier initiative program), Customs duties and inspection, Entry of merchandise (Line release), Reporting and recordkeeping requirements.

19 CFR Part 178

Administrative practice and procedure, Collections of information, Imports, Paperwork requirements, Reporting and recordkeeping requirements.

AMENDMENTS TO THE REGULATIONS

Parts 4, 19, 122, 123, 127, 141, 142 and 178, Customs Regulations (19 CFR parts 4, 19, 122, 123, 127, 141, 142 and 178), are amended as set forth below.

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The general authority citation for part 4 and the relevant specific authority citation continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1431, 1433, 1434, 1624; 46 U.S.C. App. 3, 91.

* * * * *

Section 4.37 also issued under 19 U.S.C. 1448, 1457, 1490;

* * * * *

2. Section 4.37 is amended as follows:

- a. by adding a sentence after the third sentence in paragraph (c);
- b. by redesignating paragraphs (d), (e), (f), and (g), respectively, as paragraphs (e), (f), (g), and (h), and adding a new paragraph (d); and
- c. by adding two sentences at the end of redesignated paragraph (e)

The additions and revisions read as follows:

§ 4.37 General order.

* * * * *

(c) * * * The arriving carrier (or other party to whom custody of the merchandise was transferred by the arriving carrier under a Customs-authorized permit to transfer or in-bond entry) is responsible for preparing a Customs Form (CF) 6043 (Delivery Ticket), or other similar Customs document designated by the port director or an electronic equivalent as authorized by Customs, to cover the proprietor's receipt of the merchandise and its transport to the warehouse from the custody of the arriving carrier (or other party to whom custody of the merchandise was transferred by the carrier under a Customs-authorized permit to transfer or in-bond entry) (see § 19.9 of this chapter). * * *

(d) If a carrier or any other party to whom custody of the unentered merchandise has been transferred by means of a Customs-authorized permit to transfer or in-bond entry fails to timely relinquish custody of the merchandise to a Customs-approved bonded General Order warehouse, the carrier or other party may be liable for liquidated damages equal to the value of that merchandise under the terms and conditions of his international carrier or custodial bond, as applicable.

(e) * * * If the port director finds that the warehouse operator cannot accept the goods because they are required by law to be exported or destroyed (see § 127.28 of this chapter), or for other good cause, the goods will remain in the custody of the arriving carrier or other party to whom the goods have been transferred under a Customs-authorized permit to transfer or in-bond entry. In this event, the carrier or other party will be responsible under bond for exporting or destroying the goods, as necessary (see §§ 113.63(c)(3) and 113.64(b) of this chapter).

* * * * *

PART 19—CUSTOMS WAREHOUSES, CONTAINER STATIONS, AND CONTROL OF MERCHANDISE THEREIN

1. The general and relevant specific authority citations for part 19 continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States), 1624;

Section 19.1 also issued under 19 U.S.C. 1311, 1312, 1555, 1556, 1557, 1560, 1561, 1562;

* * * * *

2. Section 19.1 is amended:

- a. by adding a heading to paragraph (a),
- b. by revising paragraph (a)(1),
- c. by reserving paragraph (a)(10) and adding a new paragraph (a)(11),
- d. by revising paragraph (b), and
- e. by adding a new paragraph (c).

The additions and revisions read as follows:

§ 19.1 Classes of customs warehouses.

(a) *Classifications.* * * *

(1) *Class 1.* Premises that may be owned or leased by the Government, when the exigencies of the service as determined by the port director so require, and used for the storage of merchandise undergoing examination by Customs, under seizure, or pending final release from Customs custody. Merchandise will be stored in such premises only at Customs direction and will be held under “general order.”

* * * * *

(11) *Class 11.* Bonded warehouses, known as “general order warehouses,” established for the storage and disposition exclusively of general order merchandise as described in § 127.1 of this chapter.

(b) *Manipulation.* The whole or a part of any warehouse of class 1, 2, 3, 4, 5, 6, 7, or 11 may be designated a constructive manipulation (class 8) warehouse when the exigencies of the service so require.

(c) *General order.* General order merchandise as described in § 127.1 of this chapter may be stored and disposed of in a Class 11 warehouse or a warehouse of Class 3, 4, or 5, provided the Class 3, 4, or 5 warehouse has also been certified by the port director as meeting the criteria for a Class 11 warehouse, following an application under § 19.2. So far as such warehouses are used for the purpose of handling general order goods, they will also be considered general order (Class 11) warehouses. If there is no space at a warehouse of any of these classes available, the proprietor of such a warehouse, with the approval of the port director of the port nearest to where the warehouse is located, may rent or lease additional suitable premises for the storage of general order merchandise.

3. Section 19.2 is amended by adding a new paragraph (d) and by revising the second sentence of paragraph (f) to read as follows:

§ 19.2 Applications to bond.

* * * * *

(d) An applicant desiring to establish a general order warehouse may need to establish, as a condition of approval of the application, that the warehouse will meet minimum space requirements imposed by the port director to accommodate the storage of general order merchandise. Any space requirements will be posted by written notice at the customhouse and on the appropriate Customs-authorized electronic data interchange system. An applicant will not be subject to any minimum space requirements that are posted after the filing of his application.

* * * * *

(f) * * * The port director may require an individual applicant to submit fingerprints on form FD 258 or electronically at the time of filing the application, or in the case of applications from a business entity, may require the fingerprints, on form FD 258 or electronically, of all employees of the business entity.

* * * * *

4. Section 19.9 is amended by revising paragraph (a) to read as follows:

§ 19.9 General order, abandoned, and seized merchandise.

(a) *Acceptance of merchandise.* The arriving carrier (or other party to whom custody of the merchandise was transferred by the carrier under a Customs-authorized permit to transfer or in-bond entry) is responsible for preparing a Customs Form (CF) 6043 (Delivery Ticket), or other similar Customs document as designated by the port director or an electronic equivalent as authorized by Customs, to cover the proprietor's receipt of the merchandise and its transport to the warehouse from the custody of the arriving carrier (or other party to whom custody of the merchandise was transferred by the carrier under a Customs-authorized permit to transfer or in-bond entry). A joint determination will be made by the warehouse proprietor and the bonded carrier of the quantity and condition of the goods or articles so delivered to the warehouse. Within two working days of the joint determination, the warehouse proprietor will report to the port director any discrepancy between the quantity and condition of the goods and that reported on CF 6043, or other similar Customs document as designated by the port director or an electronic equivalent as authorized by Customs.

* * * * *

5. Section 19.12 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 19.12 Inventory control and recordkeeping system.

(a) *Systems capability.* The proprietor of a Class 11 general order warehouse as described in § 19.1 must have an automated inventory control and recordkeeping system. Proprietors of existing Class 3, 4, or 5 warehouses as described in § 19.1 certified before December 9, 2002 to

receive general order merchandise must have automated inventory control and recordkeeping systems in place with respect to general order merchandise after a period of 2 years from December 9, 2002. All other warehouse proprietors have a choice of maintaining manual or automated inventory control and recordkeeping systems or a combination of manual and automated systems. All inventory control and recordkeeping systems must be capable of:

* * * * *

PART 122—AIR COMMERCE REGULATIONS

1. The authority citation for part 122 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58b, 66, 1433, 1436, 1448, 1459, 1590, 1594, 1623, 1624, 1644, 1644a.

2. Section 122.50 is amended:

- a. by revising the heading;
- b. by adding a sentence after the third sentence in paragraph (c);
- c. by redesignating paragraphs (d), (e) and (f), respectively, as paragraphs (e), (f) and (g), and adding a new paragraph (d); and
- d. by adding two sentences at the end of redesignated paragraph (e).

The additions and revisions read as follows:

§ 122.50 General order merchandise.

* * * * *

(c) * * * The arriving carrier (or other party to whom custody of the merchandise was transferred by the carrier under a Customs-authorized permit to transfer or in-bond entry) is responsible for preparing a Customs Form (CF) 6043 (Delivery Ticket), or other similar Customs document as designated by the port director or an electronic equivalent as authorized by Customs, to cover the proprietor's receipt of the merchandise and its transport to the warehouse from the custody of the arriving carrier (or other party to whom custody of the merchandise was transferred by the carrier under a Customs-authorized permit to transfer or in-bond entry) (see § 19.9 of this chapter). * * *

(d) If the carrier or any other party to whom custody of the unentered merchandise has been transferred by a Customs-authorized permit to transfer or in-bond entry fails to timely relinquish custody of the merchandise to a Customs-approved bonded General Order warehouse, the carrier or other party may be liable for liquidated damages equal to the value of that merchandise under the terms and conditions of his international carrier or custodial bond, as applicable.

(e) * * * If the port director finds that the warehouse proprietor cannot accept the goods because they are required by law to be exported or destroyed (see § 127.28 of this chapter), or for other good cause, the goods will remain in the custody of the arriving carrier or other party to whom the goods have been transferred under a Customs-authorized permit to transfer or in-bond entry. In this event, the carrier or other party will be responsible under bond for exporting or destroying the goods, as necessary (see §§ 113.63(c)(3) and 113.64(b) of this chapter).

* * * * *

PART 123—CUSTOMS RELATIONS WITH CANADA AND MEXICO

1. The general authority citation for part 123 continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States (HTSUS)), 1431, 1433, 1436, 1448, 1624.

* * * * *

2. Section 123.10 is amended:

- a. by revising the heading;
 - b. by adding a sentence after the third sentence in paragraph (c);
 - c. by redesignating paragraphs (d), (e) and (f), respectively, as paragraphs (e), (f) and (g), and adding a new paragraph (d); and
 - d. by adding two sentences at the end of redesignated paragraph (e).
- The additions and revisions read as follows:

§ 123.10 General order merchandise.

* * * * *

(c) * * * The arriving carrier (or other party to whom custody of the merchandise was transferred by the carrier under a Customs-authorized permit to transfer or in-bond entry) is responsible for preparing a Customs Form (CF) 6043 (Delivery Ticket), or other similar Customs document as designated by the port director or an electronic equivalent as authorized by Customs, to cover the proprietor's receipt of the merchandise and its transport to the warehouse from the custody of the arriving carrier (or other party to whom custody of the merchandise was transferred by the carrier under a Customs-authorized permit to transfer or in-bond entry) (see § 19.9 of this chapter). * * *

(d) If the carrier or any other party to whom custody of the unentered merchandise has been transferred by a Customs-authorized permit to transfer or in-bond entry fails to timely relinquish custody of the merchandise to a Customs-approved bonded General Order warehouse, the carrier or other party may be liable for liquidated damages equal to the value of that merchandise under the terms and conditions of his international carrier or custodial bond, as applicable.

(e) * * * If the port director finds that the warehouse proprietor cannot accept the goods because they are required by law to be exported or destroyed (see § 127.28 of this chapter), or for other good cause, the goods will remain in the custody of the arriving carrier or other party to whom the goods have been transferred under a Customs-authorized permit to transfer or in-bond entry. In this event, the carrier or other party will be responsible under bond for exporting or destroying the goods, as necessary (see §§ 113.63(c)(3) and 113.64(b) of this chapter).

* * * * *

**PART 127—GENERAL ORDER, UNCLAIMED AND
ABANDONED MERCHANDISE**

1. The general authority citation for part 127 is revised, and specific sectional authority citations are added, to read as follows:

Authority: 19 U.S.C. 66, 1311, 1312, 1484, 1485, 1490, 1491, 1492, 1493, 1506, 1559, 1563, 1623, 1624, 1646a; 26 U.S.C. 5753.

Section 127.12 also issued under 19 U.S.C. 1753;

Section 127.14 also issued under 19 U.S.C. 1555, 1556, 1557;

Section 127.21 also issued under 19 U.S.C. 1753;

Section 127.28 also issued under 15 U.S.C. 2612, 26 U.S.C. 5688;

Sections 127.31, 127.36, 127.37 also issued under 19 U.S.C. 1753.

2. Part 127 is amended by removing the statutory authority citations that appear in parentheses immediately below the texts of §§ 127.1, 127.2, 127.11–127.14, 127.21, 127.23 through 127.29, and 127.31 through 127.37.

3. Section 127.13 is amended by revising paragraph (a) to read as follows:

§ 127.13 Storage of unclaimed and abandoned merchandise.

(a) *Place of storage.* A Class 11 bonded warehouse or warehouse of Class 3, 4, or 5, certified by the port director as qualified to receive general order merchandise, will be responsible for the transportation and storage of unclaimed and abandoned merchandise, upon due notification to the proprietor of the warehouse by the arriving carrier (or other party to whom the carrier has transferred the merchandise under a Customs-authorized permit to transfer or in-bond entry), as provided in §§ 4.37(c), 122.50(c), and 123.10(c) of this chapter. If no warehouse of these classes is available to receive general order merchandise, or if the merchandise requires specialized storage facilities which are unavailable in a bonded facility, the port director, after having received notice of the presence of unentered merchandise or baggage in accordance with the provisions of this section, will direct the storage of the merchandise by the carrier or by any other appropriate means.

* * * * *

4. Section 127.14 is amended by revising paragraph (a) to read as follows:

§ 127.14 Disposition of merchandise in Customs custody beyond time fixed by law.

(a) *Merchandise subject to sale or other disposition.* (1) *General.* If storage or other charges due the United States have not been paid on merchandise remaining in Customs custody after the expiration of the bond period in the case of merchandise entered for warehouse, or after the expiration of the general order period, as defined in § 127.4, in any other case, even though any duties due have been paid, such merchandise will be sold as provided in subpart C of this part, retained for official use as provided in subpart E of this part, destroyed, or otherwise disposed of as authorized by the Commissioner of Customs under the law,

unless the merchandise is entered or withdrawn for consumption in accordance with paragraph (b) of this section.

(2) *Destruction of merchandise.* (i) *Proprietor responsibility.* If the port director concludes that merchandise in general order has no commercial value or is otherwise unsalable and cannot be disposed of at public auction (see § 127.29), and that its destruction is warranted, the warehouse proprietor must assume responsibility under bond, including the expense, for destroying the merchandise (see § 113.63(c)(3) of this chapter). The port director will authorize such destruction on Customs Form (CF) 3499, or on a similar Customs document as designated by the port director or an electronic equivalent as authorized by Customs.

(ii) *Notice of destruction.* Before destroying the merchandise, the warehouse proprietor must first make a reasonable effort under bond (see § 113.63(b) and (c) of this chapter), to identify and inform the importer (owner) or consignee regarding the intended destruction of the merchandise. When the appropriate party is identified, notice of destruction will be provided to the party on Customs Form (CF) 5251, appropriately modified, or other similar Customs document as designated by the port director or an electronic equivalent as authorized by Customs, at least 30 calendar days prior to the date of intended destruction.

* * * * *

5. Section 127.21 is amended by revising its first sentence to read as follows:

§ 127.21 Time of sale.

All unclaimed and abandoned merchandise will be sold at the first regular sale held after the merchandise becomes subject to sale, unless a deferment of its sale is authorized by the port director. * * *

6. Section 127.28 is amended by revising the first sentence of paragraph (a) to read as follows:

§ 127.28 Special merchandise.

(a) *Drugs, seeds, plants, nursery stock, and other articles required to be inspected by the Department of Agriculture.* Drugs, seeds, plants, nursery stock, and other articles required to be inspected by the Department of Agriculture must be inspected by a representative of the Department of Agriculture to ascertain whether they comply with the requirements of the law and regulations of that Department. * * *

* * * * *

7. Part 127 is amended by adding a new subpart E to read as follows:

SUBPART E—TITLE TO UNCLAIMED AND
ABANDONED MERCHANDISE VESTING IN GOVERNMENT

§ 127.41 Government title to unclaimed and abandoned merchandise.

§ 127.42 Disposition of merchandise owned by Government.

§ 127.43 Petition of party for surplus proceeds had merchandise been sold.

SUBPART E—TITLE TO UNCLAIMED AND
ABANDONED MERCHANDISE VESTING IN GOVERNMENT

§ 127.41 Government title to unclaimed and abandoned merchandise.

(a) *Vesting of title in Government.* At the end of the 6-month period noted in § 127.11 of this part, at which time merchandise having thus remained in Customs custody is considered as unclaimed and abandoned, the port director, with the concurrence of the Assistant Commissioner, Office of Field Operations, may, in lieu of sale of the merchandise as provided in subpart C of this part, provide notice to all known interested parties under paragraph (b) of this section that the title to such merchandise will be considered as vesting in the United States, free and clear of any liens or encumbrances, as of the 30th day after the date of the notice unless, before the 30th day, the merchandise is entered or withdrawn for consumption and all duties, taxes, fees, transfer and storage charges, and any other expenses that may have accrued on the merchandise are paid.

(b) *Notice to known interested parties.* Notice that the title to unclaimed and abandoned merchandise will vest in the United States, as described in paragraph (a) of this section, will be sent to the following parties on Customs Form (CF) 5251, appropriately modified, or other similar Customs document as designated by the port director or an electronic equivalent as authorized by Customs:

- (1) Importer, if known;
- (2) Consignee, if name and address can be ascertained;
- (3) Shipper, or the shipper's representative or agent, if merchandise is consigned to order or the consignee cannot be ascertained; and
- (4) Any other known interested parties.

(c) *Appraisal of merchandise.* Before title to unclaimed and abandoned merchandise is vested in the United States, the merchandise will be appraised in accordance with section 402, Tariff Act of 1930, as amended (19 U.S.C. 1401a).

§ 127.42 Disposition of merchandise owned by Government.

(a) *Disposition.* If title to any unclaimed and abandoned merchandise vests in the United States under § 127.41, the merchandise may be retained by Customs for its official use, or in Customs discretion, the merchandise may be transferred to any other Federal, state or local agency, destroyed or disposed of otherwise.

(b) *Payment of charges and expenses.* All transfer and storage charges or expenses accruing on retained or transferred merchandise will be paid by the receiving agency. Such transfer and storage charges or expenses will include those accruing with respect to the merchandise while subject to general order.

§ 127.43 Petition of party for surplus proceeds had merchandise been sold.

(a) *Filing of petition.* Under section 491(d), Tariff Act of 1930, as amended (19 U.S.C. 1491(d)), any party who can satisfactorily establish title to or a substantial interest in unclaimed and abandoned merchandise, the title to which has vested in the United States, may file a petition for the amount that would have been payable to the party had the merchandise been sold and a proper claim made under section 493, Tariff Act of 1930, as amended (19 U.S.C. 1493).

(b) *When and with whom filed.* The petition may be filed with the port director at whose direction the title to the merchandise was vested in the United States. If the party received notice under § 127.41(b), the petition must be filed within 30 calendar days after the day on which title vested in the United States. If the party can satisfactorily establish that such notice was not received, the party must file the petition within 30 calendar days of learning of the vesting but not later than 90 calendar days from the vesting.

(c) *Evidence required.* The petition must show the party's title to or interest in the merchandise, and be supported, as appropriate, with the original bill of lading, bill of sale, contract, mortgage, or other satisfactory documentary evidence, or a certified copy of the foregoing. Also, if applicable, the petition must be supported by satisfactory proof that the petitioner did not receive notice that title to the merchandise would vest in the United States and was in such circumstances as prevented the receipt of notice.

(d) *Payment of claim.* If the claim of the owner, consignee, or other party having title to or a substantial interest in the merchandise, is properly established as provided in this section, the party may be paid out of the Treasury of the United States the amount that it is believed the party would have received under 19 U.S.C. 1493 had the merchandise been sold and a proper claim for the surplus of the proceeds of sale been made under that provision (see § 127.36 of this part). In determining the amount that may have been payable under 19 U.S.C. 1493, given that the merchandise was not in fact sold at public auction under 19 U.S.C. 1491(a), the appraisalment of the merchandise, as provided in § 127.41(c), will be taken into consideration. By virtue of the authority delegated to the port director in this matter, any payment made as provided under this paragraph in connection with the filing of a petition under paragraph (b) of this section will be final and conclusive on all parties.

(e) *Doubtful claim.* Any doubtful claim for payment along with all pertinent documents and information available to the port director will be forwarded to the Assistant Commissioner, Office of Finance, for instructions. The decision of the Assistant Commissioner, Office of Finance, with respect to any petition filed under this section will be final and conclusive on all parties.

PART 141—ENTRY OF MERCHANDISE

1. The general authority citation for part 141 continues to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624.

2. Section 141.5 is revised to read as follows:

§ 141.5 Time limit for entry.

Merchandise for which entry is required will be entered within 15 calendar days after landing from a vessel, aircraft or vehicle, or after arrival at the port of destination in the case of merchandise transported in bond. Merchandise for which timely entry is not made will be treated in accordance with § 4.37 or § 122.50 or § 123.10 of this chapter.

PART 142—ENTRY PROCESS

1. The authority citation for part 142 continues to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624.

2. Section 142.2 is amended by revising paragraph (a) to read as follows:

§ 142.2 Time for filing entry.

(a) *General rule: After arrival of merchandise.* Merchandise for which entry is required will be entered within 15 calendar days after landing from a vessel, aircraft or vehicle, or after arrival at the port of destination in the case of merchandise transported in bond.

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PART 178—APPROVAL OF
INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for part 178 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 1624; 44 U.S.C. 3501 *et seq.*

2. Section 178.2 listing of OMB numbers is amended by adding new listings in the table in appropriate numerical order to read as follows:

19 CFR Section	Description	OMB Control No.
* * * * *		
§ 4.37(c)	Preparation of delivery ticket for transfer of merchandise to general order	1515-0224
* * * * *		
§ 19.9(a)	Preparation of delivery ticket for transfer of merchandise to general order	1515-0224
* * * * *		

<i>19 CFR Section</i>	<i>Description</i>	<i>OMB Control No.</i>
§ 122.50(c)	Preparation of delivery ticket for transfer of merchandise to general order	1515-0224
*	* * * * *	*
§ 123.10(c)	Preparation of delivery ticket for transfer of merchandise to general order	1515-0224
*	* * * * *	*

ROBERT C. BONNER,
Commissioner of Customs.

Approved: November 4, 2002.

TIMOTHY E. SKUD,
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